

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: July 12, 2002

To: The Commission
(Meeting of July 17, 2002)

From: Bill Julian
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 1769 (Leslie)** Advertising: Unsolicited Cellular and
Pager Text Messages

As Amended June 29, 2002

Recommendation: Support.

Summary: This bill would generally prohibit a person or entity conducting business in this state from transmitting or causing to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message or a similar capability. The purpose of the bill is to prohibit unsolicited text messages from being transmitted to a cellular telephone or pager equipped with short message or a similar capability.

Analysis: This bill would add Section 17538.41 to the Business and Professions Code prohibiting a person or entity conducting business in this state from transmitting or causing to be transmitted a text message advertisement to a cellular telephone or a pager equipped with short message capability or any similar capability allowing the transmission of text messages. The bill defines a text message advertisement as a message, the principal purpose of which is to promote the sale of goods or services to the recipient, consisting of advertising material. The bill would exempt text messages transmitted by or at the direction of a person or entity offering cellular telephone or pager service if the subscriber is offered an option to not receive such messages. The bill also would exempt text messages transmitted by a business that has an existing relationship with the subscriber if the subscriber is offered an option not to receive text messages from that business, or text messages transmitted by an affiliate of that business if the subscriber provides consent to receive such messages from an affiliate.

The CPUC has limited authority with regard to wireless services. The CPUC has no jurisdiction at all on one-way paging, including PCS (personal communications service) data, and has limited jurisdiction on CMRS (commercial mobile radio service) providers regarding their terms and conditions of providing service, but has not fully exercised or defined such limited jurisdiction. The issue is complicated by the fact that wireless spamming can be interstate in nature, thus, the subject of pending federal legislation (HR 113 Holt) and HR 95 (Green).

LEGISLATIVE HISTORY

Pending federal legislation regarding wireless spamming (HR 113 Holt) and HR 95 (Green).

SUPPORT/OPPOSITION

Support:

Attorney General
Coalition Against Unsolicited Commercial E-Mail (CAUCE)
Office of Ratepayer Advocates (ORA)

Opposition:

None on file.

LEGISLATIVE STAFF CONTACT

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Date: June 19, 2002

BJ:rar
Attachment

BILL LANGUAGE:

BILL NUMBER: AB 1769 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 29, 2002
AMENDED IN SENATE JUNE 18, 2002
AMENDED IN SENATE MAY 22, 2002
AMENDED IN ASSEMBLY MARCH 20, 2002

INTRODUCED BY Assembly Member Leslie
 (Coauthors: Assembly Members Aanestad, Harman, La Suer,
Longville, Robert Pacheco, Pescetti, and Salinas)
 (Coauthors: Senators Johannessen and Morrow)

JANUARY 9, 2002

An act to add Section 17538.41 to the Business and Professions Code, relating to advertising.

LEGISLATIVE COUNSEL'S DIGEST

AB 1769, as amended, Leslie. Advertising: unsolicited cellular telephone and pager text messages.

Existing law provides for the regulation of advertising and specifically prohibits a person conducting business in this state from faxing or electronically mailing unsolicited advertising material, unless certain conditions are satisfied. Existing law provides that a violation of the provisions regulating advertising is a misdemeanor, and also provides for imposition of civil penalties and injunctive relief.

This bill would, subject to certain exceptions, generally prohibit a person or entity conducting business in this state from transmitting or causing to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message or a similar capability, consisting of ~~unsolicited~~ advertising material. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17538.41 is added to the Business and Professions Code, to read:

17538.41. (a) (1) Except as provided in subdivision (b), (c), or (d), no person or entity conducting business in this state shall transmit or cause to be transmitted a text message advertisement to a cellular telephone or pager equipped with short message capability or any similar capability allowing the transmission of text messages.

A text message advertisement is a message, the principal purpose of which is to promote the sale of goods or services to the recipient, consisting of ~~unsolicited~~ advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit.

(2) This section shall apply when a text message advertisement is transmitted to a telephone number assigned for cellular telephone or pager service to a California resident.

(b) This section does not apply to text messages transmitted at the direction of a person or entity offering cellular telephone or pager service if the subscriber is offered an option to not receive those text messages.

(c) This section does not apply to text messages transmitted by a business that has an existing ~~or prior~~ relationship with the subscriber if the subscriber is offered an option not to receive text messages from that business.

(d) This section does not apply to text messages transmitted by an affiliate of a business that has an existing ~~or prior~~ relationship with the subscriber, but only if the subscriber has provided ~~a~~ consent to the business with which he or she has that relationship ~~with~~ to receive text messages from affiliates of that business.

~~"Affiliate"~~ "Affiliate" means any company that controls, is controlled by, or is under common control with, another company.

(e) Subdivision (a) shall not impose an obligation on a person or entity offering cellular or pager service to control the transmission of a text message unless the message is transmitted at the direction of that person or entity.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.